

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONIA B. DAVIS,

Plaintiff,

v.

CITY OF MOUNT VERNON, MOUNT
VERNON POLICE DEPARTMENT, POLICE
OFFICER DERVIN CHERY, POLICE
OFFICER EDUARDO BAERGA, POLICE
OFFICER TIMOTHY W. BRILEY, POLICE
OFFICER DARIUS M. MITCHELL, POLICE
OFFICER ROBERT F. KRESSMAN,
SERGEANT MICHAEL MARCUCULLI, and
POLICE OFFICERS JOHN & JANE DOE,
Defendants.USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/21/21**ORDER**

17 CV 8029 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briceff

On August 30, 2021, plaintiff, proceeding pro se, requested an update on the status of this case. By Memorandum Endorsement dated September 3, 2021, the Court stated that plaintiff's case was terminated on June 24, 2020. (Doc. #60). The Court also reminded plaintiff that (i) the Court issued an Opinion and Order granting defendants' motion for summary judgment and denying plaintiff's cross-motion for summary judgment on June 22, 2020; (ii) the Clerk of Court issued a Judgment terminating plaintiff's case on June 24, 2020; and (iii) a copy of the Judgment, which stated that the Court had granted defendants' motion and denied plaintiff's cross-motion, was mailed to plaintiff at her address on the docket on June 24, 2020. (*Id.*).¹ On September 3, 2021, the Court mailed to plaintiff a copy of the September 3 Memorandum Endorsement, the June 22 Opinion and Order, the Clerk's Judgment and notice of right to appeal (Doc. #59), plaintiff's medical records that she had mailed to the Court, and a copy of the ECF docket. (*Id.*).

On September 20, 2021, the Court received the attached letter, notice of appeal, and application to proceed IFP from plaintiff. The Federal Rules of Appellate Procedure provide that a notice of appeal in a civil case must be filed with the district clerk within 30 days after entry of the judgment or order appealed from. Fed. R. App. P. 4(a)(1)(A).² Because plaintiff's time to appeal has expired, the Court will construe plaintiff's notice of appeal as a motion to reopen the time to appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

Rule 4(a)(6) permits a district court to reopen the time to file an appeal only if:

¹ On June 24, 2020, the Court also mailed to plaintiff a notice of right to appeal, and instructions on how to appeal her case. (Doc. #59).

² Plaintiff will be provided copies of all unpublished opinions cited in this decision. See *Lebron v. Sanders*, 557 F.3d 76, 79 (2d Cir. 2009).

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6).

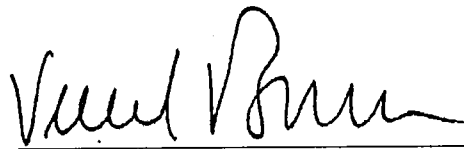
Plaintiff has failed to satisfy the preconditions of Rule 4(a)(6). Specifically, plaintiff has failed to satisfy the second prong of Rule 4(a)(6), which requires that a motion to reopen the time to appeal be “filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier.” Fed. R. App. P. 4(a)(6)(B); see also United States v. Zvi, 274 F. App’x 87, 88 (2d Cir. 2008) (stating the district court did not have discretion under Rule 4(a)(6)(B) to reopen the time to appeal when the plaintiff failed to file notice within 180 days of the order closing the case).

Judgment in this action was entered on June 24, 2020. Therefore, the latest date plaintiff could have filed her motion to reopen the time to file an appeal was December 21, 2020.

Accordingly, plaintiff’s motion to reopen the time to file an appeal is untimely and must be DENIED.

Dated: September 21, 2021
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Sonia B Davis

(List the full name(s) of the plaintiff(s)/petitioner(s).)

17 cv 8029(VB)(et al)

-against-

NOTICE OF APPEAL

City of Mount Vernon, Mount
Vernon Police Department and Police officers
(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: Sonia B Davis

(List the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the

☒ judgment

☐ order

entered on:

June 24, 20 document
(date that judgment or order was entered on docket) 59-1

that:

I'm not a lawyer, I don't understand these paper
that be sent to me, I was getting Operation every year.

(If the appeal is from an order, provide a brief description above of the decision in the order.)

I'm taking medicine, I did not know the case was closed.
9-15-21

Dated

Signature

Davis Sonia B

Name (Last, First, MI)

58 Grove Park Ln Henderson, N.C 27537

Address

City

State

Zip Code

252-767-0337

Telephone Number

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

Case 17cv-8029(VB)

9-15-21

Sonia B Davis
58 Grove Park Ln
Henderson, NC 27537

Judge Vincent L. Bricecetti

your Honor you think it was
alright for Mount Vernon Police Officers
to jump me I had 17 Fusion Operations
before the Police Officers jumped 218 South
3rd Ave Apt 413 on Oct 19 2016.
It was wrong for Police to do that.
I got hurt they injured my Shoulder
both of them my Right ankle and foot
my back my cervical, Thoracic
Lumbar I just had operation on
January 25 2016 on my Right Ankle
and foot now from Oct 19, 2016
~~and~~ sorry these Police Officers
got by with beating, it was
a ride to the Hospital.
Police officers all over TV the
same thing Mount Vernon Police Officers
Did too me,

Turn

(It Like Know Cares.)

P.S.

I Can't Work at
all. Too many Fusion
in my Back.

As the Police Officers
Snatch my Nerves the wrong way

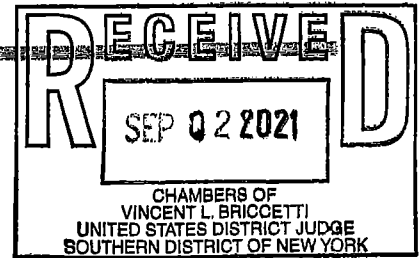
I have a nerves condition
I jump all the time my legs,
and my arms, I have a pinch nerve
in my buttock. I'm a Fall Risk patient.

• **FALL RISK**

FALL RISK •

Sonia B. Davis

58 Grove Park Lane
Henderson, NC 27537



30th August 2021

Dear Judge Vincent Briccetti,

I am writing to you your Honor because I am trying to find out where my **case ORDER 17 CV 8029 (VB)** stands at this time. The last time I was there in front of you I was scared due to the fact I am not a lawyer and I wasn't sure about what needed to be done.

I wanted to explain what happened in my apartment at 218 South 3rd ave apt 4B in Mount Vernon NY 10550 on Oct. 19th, 2016.

I had fallen and had a cut across my eye on my forehead, I called the police department instead of 911 when they arrived 3 police came first and seven more with the ME's. The MEs were worried about me having a concussion I didn't want to go to the hospital because the bleeding had stopped. Sitting on my couch four police officers came running in my door and approached me without talking to the other officers and they attacked me and pulled me off my couch and they took my arms up to my back and slammed me into boxes that had stereo equipment and speakers inside. They handcuffed me and did not read me my rights. They picked me up and slammed me down and with their elbows, they hit me in my back and did it about four times and they grabbed my right ankle and kept dropping and pulling it and I had just had an operation on Jan. 25th, 2016. While this happened no one said anything or tried to stop them and after all that, they wouldn't let me get any of my belongings. I was trying to tell them I needed my boot for my foot and my cane but, they told me to stop exaggerating there is nothing wrong with you. They took me down the steps while handcuffed, and as they brought me down my ankle was hitting the stairs. All this for a ride to the hospital. Thank you for taking the time to read this letter.

Sincerely,

Sonia B Davis

Date
9-15-21

Application to Appeal In Forma Pauperis

Sonia B Davis v. City of Mount Vernon, Police Department Appeal No. 17cv8029(VB)
Police Officers District Court or Agency No. Document 59-1

<p>Affidavit in Support of Motion</p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: <u>Sonia B Davis</u></p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: <u>9-15-21</u></p>
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My issues on appeal are: (required):

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
<u>none</u>				
Employment <u>none</u>	\$ <u>none</u>	\$	\$	\$
Self-employment	\$ <u>none</u>	\$	\$	\$
Income from real property (such as rental income) <u>none</u>	\$ <u>none</u>	\$	\$	\$

Interest and dividends	\$ none	\$	\$	\$
Gifts	\$ none	\$	\$	\$
Alimony	\$ none	\$	\$	\$
Child support	\$ none	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$ none	\$	\$	\$
Disability (such as social security, insurance payments)	\$ 735	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$ 0 735 a month	\$ 0	\$ 0	\$ 0

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
	N A		\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
	N A		\$
			\$
			\$

4. How much cash do you and your spouse have? \$ none

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
	<u>NA</u>	\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$ <u>124 thousand</u>	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:	<u>NA</u>	<u>NA</u>
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<i>NA</i>	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age
<i>NA</i>		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	\$	\$
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 359.42	\$
Home maintenance (repairs and upkeep)	\$ 75 a month	\$
Food	\$ 500	\$
Clothing	<i>None</i>	\$
Laundry and dry-cleaning	\$ no	\$
Medical and dental expenses	\$ 3.00	\$

*Copy trip to the
Every doctor office medicine
bottle 3.00 a piece*

Transportation (not including motor vehicle payments)	\$ none	\$
Recreation, entertainment, newspapers, magazines, etc.	\$ none	\$
Insurance (not deducted from wages or included in mortgage payments)	none	
<u>Homeowner's</u> or renter's:	\$ Home owned	\$
Life:	\$ none	\$
Health:	I hurt all the time	\$
Motor vehicle:	I Had 17 Operation before Mount Vernon Police officers jump me	\$
Other:		\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ none	\$
Installment payments	none	
Motor Vehicle:	\$ none	\$
Credit card (name):	\$ none	\$
Department store (name):	\$ none	\$
Other:	\$ none	\$
Alimony, maintenance, and support paid to others	\$ none	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ none	\$
Other (specify):	Issue Cleaning Bathroom	\$ 150 a month
Total monthly expenses:	\$ 0 150	\$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? ☐ Yes ☒ No

If yes, how much? \$ _____

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

I'm not working, SSI cut me off every day I'm hurting there is no money

12. Identify the city and state of your legal residence.

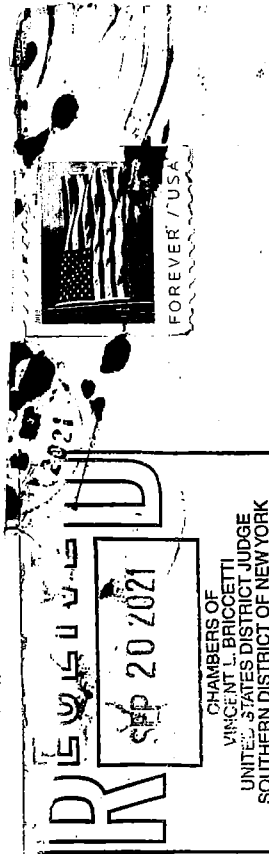
City Henderson State N.C.

Your daytime phone number: 252-

Your age: 58 Your years of schooling: finish 8

Last four digits of your social-security number: 5317

Sonia B. Davis
58 Grove Park Ln
Henderson, NC 27537



U.S. Judge Vincent L. Briccetti
300 Quarropas Street
white plains, N.Y 10601

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